

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-3947
September 8, 2005

R E S O L U T I O N

Resolution E-3947. Pacific Gas and Electric Company for approval of its updated long-term procurement plan filed in compliance with D.04-12-048.

By Advice Letter 2643, 2643-E-A, filed March 25, and April 1, 2005.

SUMMARY

This Resolution approves Pacific Gas and Electric Company's (PG&E) updated long-term procurement plan filed in compliance with Decision (D.) 04-12-048.

Per Ordering Paragraphs (OP) 1 and 24 of D.04-12-048, PG&E filed its updated long-term procurement plan on March 25, 2005. PG&E filed a supplement to the Advice Letter (AL) 2643 on April 1, 2005.

PG&E's supplement requested that the filing be effective on April 1, 2005.

The AL submitted by PG&E includes confidential appendices intended to demonstrate its compliance with D.04-12-048. PG&E submitted those appendices as Confidential Material protected by Section 583 of the Public Utilities Code, which prohibits disclosure of confidential public utility information except by Commission order or in the course of a hearing or proceeding.

The City and County of San Francisco (City) protested PG&E AL 2643-E and its supplement 2643-E-A on April 21, 2005. The City's protest is rejected.

This resolution approves AL 2643-E, and 2643-E-A effective today, August 25, 2005.

BACKGROUND

D.04-12-048 orders the three major electric utilities to submit compliance filings to update their procurement plans in accordance with the direction provided in the Decision.

On December 16, 2004, the Commission adopted D.04-12-048 in Rulemaking 04-04-003, an Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.

The objective of D.04-12-048 was “to give the three IOUs [investor-owned utilities] authorization to plan for and procure the resources necessary to provide reliable service to their customer loads for the planning period 2005 through 2014” as well as “coordinate and incorporate Commission and legislative efforts for other proceedings.”¹ Towards this end, D.04-12-048 adopted the long-term procurement plans of the three IOUs (Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas and Electric Company), provided direction on resource planning, and ordered the following:

“Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) shall, by no later than March 25, 2005, submit a compliance filing updating their procurement plans to reflect the changes and modifications adopted in today’s decision. This compliance filing, shall include, but not be limited to the following:

- a. Annual energy and capacity resource accounting tables, consistent with directions on baseline load forecasts adopted in this decision;
- b. Procurement activities undertaken by the utilities subsequent to their initial filings in this proceeding;
- c. Revised energy efficiency targets as adopted in Decision (D.) 04-09-060;

¹ D.04-12-048, p.5

- d. Demand response programs proposed for 2005 implementation in Rulemaking (R.) 02-06-001;
- e. The effect of resource adequacy and local reliability requirements adopted respectively in D.04-10-035 and D.04-07-028;
- f. Changes occurring as a result of Commission decisions implementing Community Choice Aggregation (CCA) in R.03-10-033;
- g. Revised forecasts for the price of natural gas, if necessary;
- h. Status of qualifying facilities (QFs) with soon to be expiring contracts; and
- i. Any other material information that affects the utilities' procurement activities."

In compliance with the Decision, PG&E, SCE and SDG&E filed updates to their long-term procurement plans on March 25, 2005.

NOTICE

Notice of AL 2643-E was made by publication in the Commission's Daily Calendar. PG&E states that copies of the Advice Letter were mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

The City and County of San Francisco (City) protested PG&E AL 2643-E and its supplement 2643-E-A on April 21, 2005. The City is concerned about the agreement PG&E executed with Mirant, which is a part of the settlement CPUC entered into with Mirant and its affiliates. The City requests that the Commission reject the advice letter and the amendment, if it results in the possibility that Potrero Power Plant would operate more hours than it would under a condition 2 Reliability Must Run (RMR) Agreement; if not, then the City still requests that Commission deny PG&E's AL since the agreement cannot be used to satisfy PG&E's resource adequacy requirements.

Stating that the Potrero Power Plant is old, inefficient, and a major source of water and air pollution, the City opposes any agreement that could allow the plant to operate more hours and emit more pollution.

The City is concerned that Mirant will obtain from the ISO approval to elect Condition 1 operation under RMR agreement with the ISO. However, under Condition 1 Mirant may elect to participate in market transactions beyond times that ISO may need to dispatch the units for reliability purposes.

The City also points out that in another section of the Agreement, it is stated that neither Mirant nor PG&E has the right to dispatch the units beyond ISO's dispatch. The City questions the purpose of the condition change if the plant will not operate any more than is needed for system reliability.

In its response to the City's protest,² PG&E states that the City's request is moot and should be denied, since the agreement in dispute is already approved by the Commission.

PG&E emphasizes that the status change from condition 2 to condition 1 cannot result in an increase in operation beyond what is required by ISO dispatch, since both Mirant and PG&E are excluded from dispatching the units beyond the ISO's dispatch. PG&E also adds that the City's statements on PG&E's compliance with the resource adequacy requirements is premature since the rules are in progress and the compliance is not an issue to be determined in this advice letter.

DISCUSSION

Energy Division reviewed PG&E's compliance filing and concluded that PG&E's updated long-term procurement plan complied with D.04-12-048.

Per the OP 1 of D.04-12-048, PG&E filed its updated long-term procurement plan on March 25, 2005, and submitted a supplement on April 12, 2005. PG&E included the following updates in its compliance filing:

² PG&E received the protest on April 27, 2005 and responded within five business days after receipt, in compliance with General Order 96-A.

- Annual energy and capacity balance tables;
- PG&E's procurement activity since July 9, 2004;
 - Mirant Agreement
 - TriDam Contract
 - November-December Procurement RFO
 - Short-term Procurement
- Updated energy efficiency (EE) assumptions to match the EE targets provided in D.04-09-060;
- Peak load reductions equal to demand response targets set in D.03-06-062;
- Resource adequacy requirements;
- Delayed expected impacts of CCA program based on the current implementation plan delays; and
- Updated natural gas and forward electric prices.

PG&E's filing contains the updates ordered in D.04-12-048. The Energy Division concludes that PG&E filing should be approved.

The Energy Division also concludes that this advice letter is not the proper channel to protest the agreement entered by the CPUC and approved by FERC. Therefore, the City's request is denied.

CPUC had entered into the settlement agreement with Mirant Corporation and its affiliates as announced in the CPUC's January 14, 2005 Press Release. The FERC approved the settlement agreement on April 13, 2005. PG&E's compliance filings appropriately included the capacity of the plant.

D.04-12-048 expressed the Commission's intent to provide updated capacity and energy tables, once the data are revised. Specifically, the Decision stated the following:

"This Commission favors openness in its decisions and in the information that market participants have in dealing with each other. Another section of this decision discusses specifically how we are responding to legislative direction on confidentiality matters. In this section we note that it is not

the intent of the Commission to provide the means by which market power could be exercised against the LSEs and, hence, against electric service customers in California. Therefore, this decision does not present information about the current NOPs of the utilities. Nor do we provide the elements from which that information can be calculated. **However, we will provide simplified tables based on projections of future resource balance information for the years 2007-2014 after those numbers have been refreshed from their initial filing in July.**" (p.32) (emphasis added)

The AL submitted by PG&E includes confidential appendices intended to demonstrate its compliance with D.04-12-048. PG&E submitted those appendices as Confidential Material protected by Section 583 of the Public Utilities Code, which prohibits disclosure of confidential public utility information except by Commission order or in the course of a hearing or proceeding.

The CPUC opened Rulemaking (R.)05-06-040, which will examine issues related to the disclosure of procurement-related data and documents, balancing the need for effective public participation with the potential harm to ratepayers that may result from disclosure of market sensitive data. In order not to prejudge the outcome of R.05-06-040, we will not disclose PG&E's updated procurement data at this time. Depending on the outcome of R.05-06-040, we may require PG&E to file a supplement to its advice letter.

COMMENTS

PU Code section 311(g) (1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution is neither waived nor reduced. Accordingly this draft resolution is mailed to parties in R.04-04-003 and will be placed on the Commission's agenda no earlier than 30 days from today. Comments are due on August 22, 2005. Reply comments are due August 29, 2005.

PG&E'S COMMENTS

On August 22, 2005, PG&E filed its comments to the draft resolution E-3947. PG&E supported the resolution, but reserved its right to challenge the disclosure requirement regarding updated procurement data submitted as part of the advice letter depending on the final, non-appealable rules adopted in Rulemaking 05-06-040. PG&E suggested the following changes to Finding 7 and Ordering Paragraph 2:

Finding 7. Depending on the outcome of R.05-06-040, we may require PG&E to disclose the updated procurement data submitted as part of its compliance filing Advice Letter AL 2643 and AL 2643-A. In the event that disclosure is required, PG&E will be given the opportunity to demonstrate harm resulting from disclosure of this data prior any disclosure.

Ordering Paragraph 2: Depending on the outcome of R.05-06-040, we may require PG&E, after it is given the opportunity to demonstrate harm, to disclose the updated procurement data submitted as part of its compliance filing Advice Letter AL 2643 and AL 2643-A.

DISCUSSION

To address PG&E's concern and provide an opportunity for PG&E to demonstrate any harm which may result from the disclosure of the updated procurement data submitted as part of its compliance filing Advice Letter AL 2643 and AL 2643-A, we will modify paragraph 7 and Ordering Paragraph 2 as following:

Finding 7. Parties interested in disclosure of the updated procurement data submitted as part of its compliance filing Advice Letter AL 2643 and AL 2643-A should submit their requests after the outcome of the R.05-06-040 and we may require PG&E to disclose a portion or all of the updated procurement data submitted as part of its compliance filing Advice Letter AL 2643 and AL 2643-A consistent with the standards developed in that Rulemaking.

Ordering Paragraph 2: Parties interested in disclosure of the updated procurement data submitted as part of its compliance filing Advice Letter AL 2643 and AL 2643-A may submit their requests after the outcome of the R.05-06-040 and we may require PG&E to disclose a portion or all of the updated procurement data submitted as part of its compliance filing Advice Letter AL

2643 and AL 2643-A consistent with the standards developed in that Rulemaking.

FINDINGS

1. Per Ordering Paragraph (OP) 1 and 24 of D.04-12-048, PG&E filed its updated long-term procurement plan.
2. The City and County of San Francisco protested Advice Letter 2643-E and its supplement.
3. This advice letter is not the proper channel to protest the agreement entered by the CPUC and approved by FERC, therefore the City's request is denied.
4. Energy Division concludes that PG&E's updated long-term procurement plans as filed in AL 2643-E and its supplement 2643-E-A comply with D.04-12-048.
5. The AL submitted by PG&E includes confidential appendices intended to demonstrate its compliance with D.04-12-048. PG&E submitted those appendices as Confidential Material protected by Section 583 of the Public Utilities Code, which prohibits disclosure of confidential public utility information except by Commission order or in the course of a hearing or proceeding.
6. The CPUC opened Rulemaking (R.) 05-06-040 which will examine issues related to the disclosure of procurement-related data and documents, balancing the need for effective public participation with the potential harm to ratepayers that may result from disclosure of market sensitive data. In order not to prejudge the outcome of R.05-06-040, we will not disclose PG&E's updated procurement data at this time.
7. Parties interested in disclosure of the updated procurement data submitted as part of its compliance filing Advice Letter AL 2643 and AL 2643-A should submit their requests after the outcome of the R.05-06-040 and we may require PG&E to disclose a portion or all of the updated procurement data submitted as part of its compliance filing Advice Letter AL 2643 and AL 2643-A consistent with the standards developed in that Rulemaking.

THEREFORE IT IS ORDERED THAT:

1. We approve PG&E's Advice Letter 2643 and 2643-E-A.
2. Parties interested in disclosure of the updated procurement data submitted as part of its compliance filing Advice Letter AL 2643 and AL 2643-A may submit

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their requests after the outcome of the R.05-06-040 and we may require PG&E to disclose a portion or all of the updated procurement data submitted as part of its compliance filing Advice Letter AL 2643 and AL 2643-A consistent with the standards developed in that Rulemaking.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on September 8, 2005; the following Commissioners voting favorably thereon:

STEVE LARSON
Executive Director

MICHAEL R. PEEVEY
PRESIDENT
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners